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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,889	11/18/2003	Hirotsugu Fukumori	71210	7992

7590 09/27/2004

McGLEW AND TUTTLE  
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EXAMINER

SANDY, ROBERT JOHN

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 09/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/716,889

Applicant(s)

FUKUMORI ET AL.

Examiner

Robert J. Sandy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 November 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☒ Certified copies of the priority documents have been received in Application No. 10/191,847.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/18/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification- Abstract***

1. The abstract of the disclosure is objected to because it exceeds more than 150 words. Applicant is reminded of the proper content of an abstract of the disclosure. See MPEP § 608.01(b).

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because: reference character "101" has been used to designate both "a miscellaneous shape extrusion-molding machine 101" and "a base tape 101";

reference character "102" has been used to designate both "a water bath 102" and "the male strip 102";

reference character "103" has been used to designate both "a slitter 103" and "the base tape 103"; and

reference character "104" has been used to designate both "a drier" and the "female strip 104".

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to teach how to make and/or use the invention, i.e., failing to provide an enabling disclosure

The following is a quotation of 37 CFR 1.71(a)-(c):

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- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because it fails to provide an enabling disclosure teaching how to make the claimed invention, as to the following: the specification fails to provide an enabling disclosure teaching how to the process of providing "letters, marks, colors" are "printed or provided *in* the material of one of the base tape and or one of the sipper tape". Without an enabling description explaining how the process of printing or providing letters, marks, or colors *in* the material of a base tape or a zipper tape, one of ordinary skill in the art would not know how to make the claimed invention.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The non-enabled subject matter, mentioned above, pertaining to the specification fails to provide an enabling disclosure

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teaching how to the process of providing "letters, marks, colors" are "printed or provided *in* the material of one of the base tape and or one of the sipper tape",

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

#### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 4 and 5, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman et al. (U. S. Patent No. 6,562,165) in view of Kettner et al. (U. S. Patent No. 5,252,281). Bauman et al. ('165) discloses a zipper tape (21) for a bag produced by forming a base tape (41, 48, 51) and a mating section (comprising a male strip (30) and a female strip (20) separately by extrusion molding (i.e., "extrusion", see col. 7, lines 28-35) and then thermally fusing and bonding (see description of pertaining to the melted flange portions 24, 34; melted binder layer 28a, 28b; see description in col. 9, line 49 through col. 10, line 23) the

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mating section to the base tape, except for wherein letters, marks, colors are printed or provided in the material of one of the base tape and or one of the zipper tape. Kettner et al. ('281) shows that it was well known to have provided colors (e.g., "red", "yellow"; see col. 1 lines 50-59) in one of the zipper tapes. Kettner further discloses (concerning claim 4) wherein the colors are given to the male strip and the female strip forming together a mating section of the zipper tape; and (concerning claim 5) wherein different colors (i.e., "red" and "yellow"; col. 1, lines 57-58) are used for the male strip and the female strip respectively. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided colors in one of the zipper tapes, as taught by Kettner et al. ('281), in order to easily verify complete occlusion of the closure members (see first paragraph following "Summary of the Invention" section in col. 2).

Claims 1-5, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman et al. (U. S. Patent No. 6,562,165) in view of Gailble et al. (U. S. Patent No. 5,397,182). Bauman et al. ('165) discloses a zipper tape (21) for a bag produced by forming a base tape (41, 48, 51) and a mating section (comprising a male strip (30) and a female strip (20) separately by extrusion molding (i.e., "extrusion", see col. 7, lines 28-35) and then thermally fusing and bonding (see description of pertaining to the melted flange portions 24, 34; melted binder layer 28a, 28b; see description in col. 9, line 49 through col. 10, line 23) the mating section to the base tape, except for wherein letters, marks, colors are printed or provided in the material of one of the base tape and or one of the zipper tape. Gailble et al. ('182) shows that it was well known to have provided letters, marks, colors are printed or provided in the material of one of the base tape and or one of the zipper tape, where Gailble et al. ('182) discloses "tips 236 of each of the two second elements 224 are colored a first color, such as blue" (col. 6, beginning with line 5) and "a second color, preferably opaque, such as white, which is preferably the same color as the associated webs 230a, 231" (col. 6, lines 8-10). Gailble et al. ('182) further discloses (concerning claim 2) wherein a specific color ("a second color, preferably opaque, such as white, which is preferably the same color as the associated webs 230a, 231" (col. 6, lines 8-10) is provided to the base tape (230a, 231) of this zipper tape; (concerning claim 3) wherein different colors ("blue" and "white") are used for the male strip

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and female strip on the base tape; (concerning claims 4) wherein colors (i.e., blue and white) are given to the male strip and the female strip forming together a mating section of the zipper tape; and (concerning claim 5) wherein different colors (i.e., blue and white) are used for the male strip and the females strip respectively. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided letters, marks, colors are printed or provided in the material of one of the base tape and or one of the zipper tape; and a specific color is provided to the base tape of this zipper tape; different colors are used for the male strip and female strip on the base tape; colors are given to the male strip and the female strip forming together a mating section of the zipper tape; and different colors are used for the male strip and the females strip respectively; as taught by Gailble et al. ('182), in order to visually inspect and verify a continuous occlusion of the closure elements with each other by visually observing through one of the webs a continuous band of a certain color (see description in col. 3, lines 41-55). Also to note, Gailble et al. ('182) discloses wherein "spacing provides areas 230b, 230a . . . to permit information . . . to be written thereon" (see col. 7, lines 49-57) thereby providing letters and marks printed on the base tape.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Japan (JP) document No. 03-099839, published 25 April 1991, discloses zipper tape structure, as shown in Figs. 1, 2 and 3, having heat-insulating films 8, 8a, welding films 4, 4a, 7, 7a, body bag films 3, 3a and zipper tapes 1, 1a. Zipper structure is also disclosed by Martinez et al. (U. S. Patent No. 5,638,587), Kirkpatrick (U. S. Patent No. 4,285,105), Porchia et al. (U. S. Patent No. 5,647,100), Schuster (U. S. Patent No. 3,819,106) Bentsen (U. S. Patent No. 4,673,383), Zieke et al. (U. S. Patent No. 4,741,789), Counts et al. (U. S. Patent No. 5,242,365), Williams (U. S. Patent No. 4,829,641), Kanemitsu et al. (U. S. Patent No. 5,335,997), and Plourde (U. S. Patent No. 6,080,252).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Sandy whose telephone number is 703-305-7413. The examiner can normally be reached on M-F (7:30-4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J.J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert J. Sandy  
Primary Examiner  
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A handwritten signature in black ink, appearing to read 'Robert J. Sandy', written in a cursive style.

**ROBERT J. SANDY  
PRIMARY EXAMINER**